

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

**WILLIAM BATES
and
ISABEL BATES,**

Respondents.

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Docket No. 08-3589-DB

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DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By separate Notices of Proposed Debarment dated March 25, 2009 and March 27, 2009 ("Notices"), the Department of Housing and Urban Development ("HUD") notified Respondents WILLIAM BATES and ISABEL BATES, respectively, that HUD was proposing their debarment and immediate suspension from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a period of three years from March 25, 2009 and March 27, 2009, the dates of their respective suspensions. The Notice further advised Respondents that their proposed debarment and suspension were in accordance with the procedures set forth in 2 CFR parts 180 and 2424.

In addition, the Notice informed Respondents that their immediate suspension and proposed debarment were based upon their conviction in the United States District Court, Southern District of Mississippi for violation of 18 U.S.C. 641 (Theft of Government Property or Funds) and 18 U.S.C. 1001 (False Statements). Respondents were alleged to have filed false claims for assistance from the Federal Emergency Management Agency and the Mississippi Development Authority (MDA), based on damage to their primary residence by Hurricane Katrina. Because Respondents were not occupying their primary residence at the time of Katrina's destruction, Respondents were ineligible to receive the \$12,696.00 FEMA paid them in assistance. MDA rejected Respondents' application, finding them ineligible for assistance because their income exceeded the maximum allowable amount. For his conviction, Respondent William Bates was sentenced to five months in prison, three years' supervised release, fined \$12,500.00, and ordered with his

wife jointly to make restitution of \$12,696.00. Respondent Isabel Bates was placed on probation for five years and fined \$10,000.00.

A telephonic hearing on Respondents' proposed debarment was held in Washington, D.C. on July 29, 2009, before the Debarring Official's Designee, Mortimer F. Coward. Respondents were unrepresented and appeared by phone. Stanley E. Field, Esq. appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondents from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a period of three years from the date of their suspension. My decision is based on the administrative record in this matter, which includes the following information:

1. The Notices of Proposed Debarment and Suspension dated March 25, 2009 and March 27, 2009.
2. A letter dated April 27, 2009, from Respondents to the acting Director of the Departmental Enforcement Center.
3. An eleven-count indictment filed in the United States District Court for the Northern District of Mississippi charging Respondents with committing several criminal offenses in violation of federal law, including making false statements and theft of Government funds.
4. The individual Judgments in a Criminal Case entered September 19, 2008, against both Respondents, recording their guilty pleas to two counts of the indictment involving theft of Government funds and making false statements, and their respective sentences of five years' probation and a fine of \$10, 000.00 for Respondent Isabel Bates and a five-month term of imprisonment, a fine of \$12,500.00, and payment of restitution of \$12,696.00 for Respondent William Bates jointly with his wife.
5. The Department's Pre-Hearing Brief in Support of a Three-Year Debarment of the Respondents filed July 1, 2009 (including all exhibits and attachments thereto).

Government Counsel's Arguments

Government counsel states that Respondent William Bates on behalf of himself and his family filed a claim for assistance with FEMA shortly after Hurricane Katrina hit the Gulf Coast. In his application, Respondent William Bates falsely claimed that on August 29, 2005, when Katrina hit he and his family were living in their primary residence in Ocean Springs, Mississippi, and were forced to evacuate their Mississippi home and move to rental housing in Bakersfield, California. In fact, according to counsel, Respondent Bates was living and working in California on August 29, 2005, and their Mississippi home was rented out when Katrina hit. Based on their application, Respondents received \$12,696.00 in FEMA assistance.

Later, in July 2006, Respondents applied for Katrina Homeowner Grant Assistance administered by MDA, a program funded by HUD under HUD's Community Development Block Grant program. In their MDA application, Respondents also falsely claimed, counsel argues, that their primary residence when Hurricane Katrina hit was in Ocean Springs, and that their personal property at that residence suffered damage from the storm. In point of fact, counsel told the hearing, Respondents' primary residence was not in Mississippi at the time Hurricane Katrina hit the Gulf Coast. In October 2007, MDA rejected Respondents' application for assistance on the basis that their income exceeded the allowable level. As a result of their fraudulent applications, Respondents were indicted on several charges, pleading guilty to two counts involving Theft of Government Funds and False Statements. Respondent William Bates was sentenced to five months' incarceration, fined \$12,500.00, ordered to make restitution of \$12,696.00 jointly with his wife, and placed on probation for three years. Respondent Isabel Bates was placed on five years' probation and fined \$10,000.00, and ordered to make restitution jointly with her husband.

Counsel argues that based on Respondents' claim for HUD funds administered by MDA, Respondents were participants in a covered transaction and are subject to HUD's debarment regulations. Counsel continues that Respondents' conviction for theft and false statements provides cause for their debarment under 2 CFR 180.800(a)(3). As a further independent ground for Respondents' debarment, counsel argues that "Respondents' theft of federal funds and use of false statements indicate a lack of business integrity or business honesty that seriously and directly affects their present responsibility." As a consequence of Respondents' conviction, counsel argues, the Government has met its burden of proof to impose a debarment.

In arguing further for Respondents' debarment, counsel notes that "Respondents' violations are quite serious; and this type of criminal activity can have a profound effect on the viability and efficacy of federal grant programs." Respondents' misconduct, counsel adds, demonstrates a serious lack of present responsibility, which can be based upon past acts. Counsel further argues that Respondents' "abuse of FEMA's rental subsidy program was a looting of a sorely strained public purse;" thus, for the safety of the public and HUD, both Respondents should be debarred for three years.

Respondents' Arguments

Respondents Bates testified that they never denied that their home in Mississippi was leased at the time of Katrina, and so declared in their application for assistance. According to Respondents, the FEMA representative who assisted them was well aware that both they and their tenant submitted individual applications for assistance. The representative, however, did not seem to think that was a problem, even assisting Respondent Isabel Bates in preparing a list of items that were damaged by the hurricane. Respondents acknowledge that they did receive \$12,696.00 in FEMA assistance, which, they assert, they applied in full to the cleanup of their home in Mississippi.

Respondents argue that they could not have intended to obtain MDA funds fraudulently because they reported their correct income. MDA determined that they were ineligible to receive assistance because their income exceeded the maximum allowable amount for their household size. Respondents challenge their debarment being based on their “fraudulent use of HUD funds [notwithstanding that they] have never received one dime under the grant assistance program.” Respondents also take issue with Government counsel’s characterization of their conduct as “looting of [the] public purse” and their actions as being no less egregious than those of persons debarred for similar conduct.

Respondents are critical of the Government’s conduct in and prosecution of the criminal case and the harshness of the sentences, as they see it, imposed on them. Respondents argue that they acted in good faith in seeking assistance to repair their damaged home. For their efforts, they were severely punished, incarcerated, and suffered financial losses, including the loss of their home.

Findings of Fact

1. Respondents’ home in Mississippi suffered damage from Hurricane Katrina.
2. Respondents were not living in their home at the time Katrina damaged it.
3. Respondents’ home was leased at the time Katrina struck.
4. Participation in the MDA and FEMA programs was limited to an owner-occupied primary residence.
5. Respondents were living in Bakersfield, California at the time Katrina damaged their home.
6. Respondents’ application for FEMA assistance was based on their occupancy of their Mississippi home at the time it was damaged by Hurricane Katrina.
7. Respondents received \$12,696.00 in FEMA funds.
8. Respondents also applied for assistance from MDA, an agency that received HUD funding.
9. Respondents’ application to MDA for assistance also was based on their occupancy of their Mississippi home at the time Hurricane Katrina struck.
10. MDA denied Respondents’ application for assistance because Respondents’ household income exceeded the allowable maximum.
11. Respondents were indicted on several charges and pleaded guilty to two counts involving Theft of Government Funds and False Statements.
12. Based on their convictions, Respondent William Bates was sentenced to five months’ incarceration, fined \$12,500.00, ordered to make restitution of \$12,696.00, and placed on three years’ supervised release. Respondent Isabel Bates was ordered to serve five years’ probation, pay a fine of \$10,000.00, and make joint restitution with her husband of \$12,696.00.

Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondents were participants or principals in a covered transaction as defined in 2 CFR part 180.
2. Respondents' application for assistance from MDA, an agency that received HUD funding, is evidence of their participation in a covered transaction.
3. The fact that Respondents were determined to be ineligible for assistance from MDA does not remove the act of their applying for MDA funds from coverage pursuant to 2 CFR part 180.
4. Respondents' claims for disaster assistance filed with FEMA and later with MDA were fraudulent in that they represented that their primary residence was in Ocean Springs, Mississippi. In fact, Respondents were occupying a residence in Bakersfield, California, and their Mississippi home was rented, when Katrina damaged their home.
5. Respondents' conviction for theft and false statements provides cause for their debarment under 2 CFR 180.800(a)(3).
6. Respondents' criminal conviction for false statements and theft demonstrates a lack of business integrity or business honesty that seriously and directly affects their present responsibility and provides cause for their debarment. *See* 2 CFR 180.800(a)(4).
7. Respondents' debarment is warranted "to protect the public interest" and to ensure that HUD does not conduct business with persons who are not presently responsible. *See* 2 CFR 180.625.
8. The Government has met its burden of demonstrating that cause exists for Respondents' debarment based on their conviction. *See* 2 CFR 180.850 and 855.
9. Relevant mitigating factors cognizable under 2 CFR 180.860 that were considered in this decision include, among others, Respondents' payment of their fines and restitution, the limited impact and episodic nature of their wrongdoing, and no known pattern or history of wrongdoing. Aggravating factors that tended to neutralize the effect of the mitigating factors include Respondents' failure to accept responsibility for their wrongdoing and no evidence of their cooperating with investigating agencies during the investigation of their conduct.
10. Respondents' actions that led to their criminal conviction raise grave doubts with respect to their business integrity and personal honesty.
11. The seriousness of Respondent' wrongdoing acts as an aggravating factor justifying a period of debarment. *See* 2 CFR 180.865(a).
12. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.

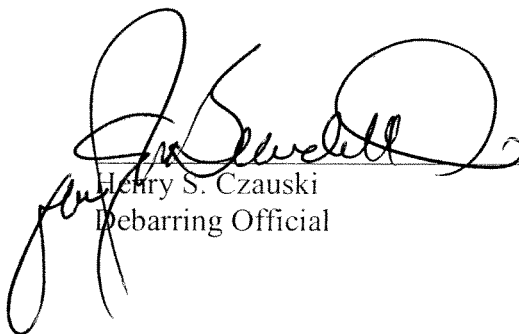
13. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honest and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondents William Bates and Isabel Bates for a three-year period from March 25, 2009 and March 27, 2009, respectively. Respondents' "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: _____

8/31/09



Henry S. Czauski
Debarring Official